

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION)	
THIS DOCUMENT RELATES TO:)	MDL NO. 1456
<i>The City of New York, et al.</i>)	Civil Action No. 01-12257-PBS
v.)	Subcategory No. 03-10643
<i>Abbott Laboratories, Inc., et al.</i>)	Judge Patti B. Saris
)	
)	
)	

**SEPTEMBER 2009 STATUS REPORT ON BEHALF OF
THE CITY OF NEW YORK AND NEW YORK COUNTIES**

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter “plaintiffs”) hereby submit the attached Status Report for September 2009, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: September 1, 2009

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange, by**

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**September 2009 Status Report on Behalf of the
City of New York and New York Counties**

FUL Summary Judgment Briefing

1. Supplemental Filings

On July 8, 2009, the Court heard oral arguments on the parties' respective motions for partial summary judgment on FUL issues. At the hearing, the Court requested a filing from the Department of Justice ("DOJ") to supplement the Brief of the United States on the Federal Upper Limit, filed June 28, 2007 [Docket No. 4413]. The DOJ had advised that it intends to provide a supplemental brief in September 2009. In addition, plaintiffs will seek leave to file a supplement regarding the calculation of FUL damages.

2. Defendants' Motion to Exclude Plaintiffs' Expert Testimony

On July 23, 2009, the Court granted Defendants' Motion for Leave to File Reply Memorandum in Support of Joint Motion to Exclude the Proffered Expert Report and Testimony of Harris Devor, C.P.A. [Docket N. 6253, Sub-docket No. 137]. Defendants filed their reply that day [Docket No. 6281; Sub-docket No. 150]. Oral argument has yet to be scheduled.

GSK Motion for Partial Summary Judgment

On July 2, 2009, GSK filed its sur-reply in support of its Motion for Partial Summary Judgment. [Docket No. 6250; Sub-docket No. 135]. The parties have requested a date for additional oral argument on this motion. No date has yet been set.

Discovery

1. Hearing as to Outstanding Discovery Motions

In response to Magistrate Judge Marianne B. Bowler's August 5, 2009, Order, plaintiffs filed their list of outstanding discovery motions on August 18, 2009. *See* Plaintiffs' List of Pending

Discovery Motions [Dkt. No. 6381; Sub-Dkt. No. 155]. Plaintiffs' list identified the following outstanding motion: Corrected Emergency Motion to Quash Defendant Schering-Plough Corporation's, Schering Corporation's and Warrick Pharmaceutical Corporation's Cross-Notice of Continued Videotaped Deposition of Lynn Donovan (hereinafter referred to as "Motion to Quash") [Dkt. No. 6262; Sub-Dkt. No. 138]. Plaintiffs request that their Motion to Quash the Donovan deposition be heard at the hearing scheduled before Magistrate Judge Bowler on September 14, 2009.

2. Schering's Motion for a Protective Order

Plaintiffs will file their motion to lift the Schering Protective Order and expert affidavit after the Court rules on GSK's Motion for Partial Summary Judgment [Docket No. 5706].

3. Merck

Plaintiffs will file their motion to compel production of discovery from defendant Merck for all drugs with spreads in excess of 30% on or before Friday, September 4, 2009.

Proposed Schering/Ven-a-Care Settlement

On August 28, 2009, plaintiffs filed their Response and Objection to the Motion for Approval of Settlement Between California, Florida, and Relator Ven-A-Care of the Florida Keys on Behalf of Itself and the United States and Schering-Plough, Schering and Warrick. *See* Dkt. No. 6435.

CERTIFICATE OF SERVICE

I, Kathryn Allen, hereby certify that on the 1st day of September, 2009, I caused a true and correct copy of the above September 2009 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: September 1, 2009

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